

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
MUR 7143)	DISMISSAL AND
Tom Garrett for Congress)	CASE CLOSURE UNDER THE
and Christopher Woodfin, as treasurer)	ENFORCEMENT PRIORITY
Thomas Garrett)	SYSTEM
)	

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include, without limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), and developments of the law. It is the Commission’s policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances.

The Office of General Counsel has scored MUR 7143 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.¹ For the reasons set forth below, we recommend that the Commission dismiss the allegations that Tom Garrett for Congress and Christopher Woodfin, in his official capacity as treasurer (the “Committee”),² and Thomas Garrett violated the Act or Commission regulations.

¹ The EPS rating information is as follows:
Filed: October 28, 2016.

Complaint Filed: September 27, 2016. Response

² Tom Garrett for Congress was established in 2016 as Garrett's principal campaign committee, and Garrett was elected to the House of Representatives from Virginia's Fifth District. Garrett was a member of the Virginia State Senate from 2012-2017.

1 The Complaint alleges that Garrett for Virginia Senate, Garrett's state senate committee, paid
2 for the Committee's initial website costs using "soft money," not subject to the source restrictions
3 and limitations of the Act. Compl. at 1, 2. The Complaint also claims that the Committee did not
4 disclose this transaction on its FEC reports. *Id.* at 1. The Response admits that the state committee
5 paid the initial website costs of \$1,495, and states that the Committee contacted the Commission's
6 Reports Analysis Division ("RAD") in August 2016 when it realized the error and asked for RAD's
7 guidance to rectify it.³ Compl. Resp. at 3, 4. The Committee, following RAD's guidance,
8 reimbursed the state committee for the website costs, and disclosed the reimbursement on its next
9 FEC report. (See Tom Garrett for Congress 2016 October Quarterly Report at 130). The state
10 committee's Virginia state filings also report the transaction.⁴

11 The Act prohibits federal candidates or an entity directly or indirectly established, financed,
12 maintained or controlled ("EFMC'd") by a candidate from receiving, directing, transferring, or
13 spending funds that fall outside "the limitations, prohibitions, and reporting requirements" of the Act
14 in connection with a federal election.⁵ The Committee admits that nonfederal funds from Garrett's
15 state committee were used to pay for expenses incurred in connection with his federal election.
16 Thus, the Committee accepted an impermissible in-kind contribution from a state committee Garrett
17 EFMC'd that maintained funds not subject to the limitations, prohibitions, and reporting
18 requirements of the Act. However, the Committee contacted the Commission about a month before

³ RAD's records confirm that the Committee contacted RAD concerning the state committee's payment of the Committee's website costs. Pursuant to RAD's Referral Policy, the low dollar amount would not have met a threshold for any further action (*i.e.*, neither an RFAI nor a referral to the Office of General Counsel or Office of Alternative Dispute Resolution).

⁴ See Garrett for Virginia Senate Campaign Finance Report, 07/01/2016 to 12/31/2016, available at <http://cfreports.sbe.virginia.gov/Report/ScheduleA/106986> (last visited March 29, 2017).

⁵ See 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61. Commission regulations also prohibit federal candidates from transferring nonfederal campaign funds to a federal campaign committee. 11 C.F.R. § 110.3(d).

1 the complaint was filed and took swift remedial action, reimbursing Garrett's state committee from
2 the federal account, and reporting the transaction on its next FEC report.

3 Thus, in furtherance of the Commission's priorities relative to other matters pending on the
4 Enforcement docket and the small amount at issue, the Office of General Counsel recommends that
5 the Commission exercise its prosecutorial discretion and dismiss the allegations pursuant to *Heckler*
6 *v. Chaney*, 470 U.S. 821, 831-32 (1985). We also recommend that the Commission approve the
7 attached Factual and Legal Analysis, close the file as to all respondents, and send the appropriate
8 letters.

9 **RECOMMENDATIONS**

- 10 1. Dismiss the allegations that Tom Garrett for Congress and Christopher Woodfin, in his
11 official capacity as treasurer, and Thomas Garrett, violated the Act and Commission
12 regulations, pursuant to the Commission's prosecutorial discretion under *Heckler*
13 *v. Chaney*, 470 U.S. 821 (1985);
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15 2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
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17 3. Close the file as to all Respondents.
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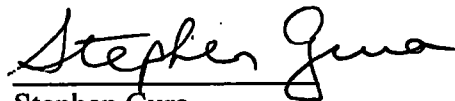
20 Lisa J. Stevenson
21 General Counsel
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24 Kathleen M. Guith
25 Associate General Counsel
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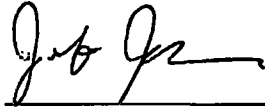
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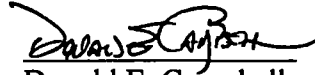


Stephen Gura

31 Deputy Associate General Counsel



Jeff S. Jordan
Assistant General Counsel



Donald E. Campbell
Attorney

Attachment:
Factual and Legal Analysis

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MUR 7143

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0 Campaign Act of 1971, as amended (“the Act”) and Commission regulations by Thomas Garrett,
1 and Tom Garrett for Congress and Christopher Woodfin, in his official capacity as treasurer, (the
2 “Committee”). It was scored as a low-rated matter under the Enforcement Priority System, by
3 which the Commission uses formal scoring criteria as a basis to allocate its resources and decide
4 which matters to pursue.

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17 The Complaint alleges that Garrett for Virginia Senate, Garrett’s state senate committee,
18 paid for the Committee’s initial website costs using “soft money,” not subject to the source
19 restrictions and limitations of the Act. Compl. at 1, 2. The Complaint also claims that the
20 Committee did not disclose this transaction on its FEC reports. *Id.* at 1. The Response admits
21 that the state committee paid the initial website costs of \$1,495, and states that the Committee
22 contacted the Commission’s Reports Analysis Division (“RAD”) in August 2016 when it
23 realized the error and asked for RAD’s guidance to rectify it.² Compl. Resp. at 3, 4. The

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2 and disclosed the reimbursement on its next FEC report. (See Tom Garrett for Congress 2016
3 October Quarterly Report at 130). The state committee's Virginia state filings also report the
4 transaction.³

5 **B. Legal Analysis**

6 The Act prohibits federal candidates or an entity directly or indirectly established,
7 financed, maintained or controlled ("EFMC'd") by a candidate from receiving, directing,
8 transferring, or spending funds that fall outside "the limitations, prohibitions, and reporting
9 requirements" of the Act in connection with a federal election.⁴ The Committee admits that
10 nonfederal funds from Garrett's state committee were used to pay for expenses incurred in
11 connection with his federal election. Thus, the Committee accepted an impermissible in-kind
12 contribution from a state committee Garrett EFMC'd that maintained funds not subject to the
13 limitations, prohibitions, and reporting requirements of the Act. However, the Committee
14 contacted the Commission about a month before the complaint was filed and took swift remedial
15 action, reimbursing Garrett's state committee from the federal account, and reporting the
16 transaction on its next FEC report.

17 Accordingly, in furtherance of the Commission's priorities relative to other matters
18 pending on the Enforcement docket and and the small amount at issue, the Commission exercises
19 its prosecutorial discretion and dismisses the allegations pursuant to *Heckler v. Chaney*, 470 U.S.
20 821, 831-32 (1985).

³ See Garrett for Virginia Senate Campaign Finance Report, 07/01/2016 to 12/31/2016, available at <http://cfreports.sbe.virginia.gov/Report/ScheduleA/106986> (last visited March 29, 2017).

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